

SkyFonts EULA [posted December 2016]

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SkyFonts has been authorized to rent SWMCA fonts and the following EULA has been approved by this company.

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SkyFonts™ Client Software

## END USER LICENSE AGREEMENT

This SkyFonts Client Software End User License Agreement (the "Agreement") becomes a binding contract between you and Monotype when you click on the area marked "ACCEPT LICENSE AGREEMENT," or similar language. If you are an entity or corporation, you are indicating that you are authorized to bind such entity or corporation to the terms of this Agreement when you accept these terms. By installing the SkyFonts Client Software you are indicating that you agree to these terms. If you do not wish to be bound by the Agreement, you cannot download, Use or install the SkyFonts Client Software.

IF YOU HAVE PREVIOUSLY ENTERED INTO A SKYFONTS SERVICES LICENSE AGREEMENT WITH MONOTYPE, THIS AGREEMENT SHALL AMEND AND SUPERSEDE THE TERMS OF THE SKYFONTS SERVICES LICENSE AGREEMENT SOLELY WITH RESPECT TO YOUR USE OF THE "SKY FONTS CLIENT SOFTWARE" AS THAT TERM IS DEFINED IN THE SKYFONTS SERVICES LICENSE AGREEMENT. Please read this entire Agreement before agreeing to be bound. The Agreement contains capitalized terms that are defined in Section 11 of the Agreement.

**1. Binding Agreement.** You are bound by the Agreement and you acknowledge that all Use of the SkyFonts Client Software is governed by the Agreement.

**2. License Grant; Compliance with Terms.** The SkyFonts Client Software is licensed, not sold, to you for use only under the terms of this Agreement. Monotype Imaging, as the licensor, reserves all rights not expressly granted to you. Subject to your compliance with all of the terms and conditions of this Agreement, you are hereby granted a limited, non-exclusive, non-assignable, non-transferable license to (i) install and access the SkyFonts Client Software on any Workstation that you own or control, and (ii) use the SkyFonts Client Software in connection with Font Software as permitted by the end user license agreement supplied with such Font Software.

**3. Indemnification of Monotype.** You agree to indemnify, defend and hold Monotype Imaging, its partners, licensors, affiliates, contractors, officers, directors, employees and agents harmless from all damages, losses and expenses arising directly or indirectly from (a) any negligent acts, omissions or willful misconduct by you, (b) your Use of the SkyFonts Client Software, (c) your non-compliance with any end user license agreement associated with (or governing your use of) any Font Software you install or access on your Workstation through the Use of the SkyFonts Client, (d) your use of the SkyFonts Client Software with third-party software, including any Font Software not supplied to you by Monotype, (e) any breach of this Agreement by you, and (f) your violation of any law or of any rights of any third party.

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**6. No Warranty; Limitation of Liability.** UNLESS SPECIFICALLY SET FORTH IN A WRITTEN AGREEMENT BETWEEN YOU AND MONOTYPE IMAGING OR AS REQUIRED BY LAW, THE SKYFONTS CLIENT SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL MONOTYPE IMAGING BE LIABLE TO YOU OR ANYONE ELSE (I) FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOST DATA, LOST BUSINESS OPPORTUNITIES, OR LOST SAVINGS, EVEN IF MONOTYPE IMAGING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (II) FOR ANY CLAIM AGAINST YOU BY ANY THIRD PARTY SEEKING SUCH DAMAGES EVEN IF MONOTYPE IMAGING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some states or jurisdictions do not allow the exclusions of limitations of incidental, consequential or special damages, so the above exclusion may not apply to you. Also, some states or jurisdictions do not allow the exclusions of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to you. To the greatest extent permitted by law, any implied warranties not effectively excluded by the Agreement are limited to thirty (30) days. Some jurisdictions do not permit a limitation of implied warranties where the product results in physical injury or death so that such limitations may not apply to you. In those jurisdictions, you agree that Monotype Imaging's liability for such physical injury or death shall not exceed One Hundred Thousand Dollars (U.S. \$100,000), provided that such jurisdictions permit a limitation of such liability. This warranty gives you specific legal rights. You may have other rights that vary from state to state or jurisdiction to jurisdiction. The SkyFonts Client Software is non-returnable and nonrefundable.

**7. Termination.** The license grants contained herein are conditioned on your compliance with all the terms and conditions of this Agreement. Upon failure by you to comply with the terms of this Agreement, the Agreement shall automatically terminate. The termination of the Agreement shall not preclude Monotype from suing you for damages of any breach of the Agreement. The Agreement may only be modified in writing signed by an authorized officer of Monotype.

**8. Partial Nullity.** In the event that any provision of this Agreement is unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or court decisions.

**9. Export.** You agree that the software licensed to you by Monotype will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration or any applicable export laws, restrictions or regulations.

**10. Governing Law and Jurisdiction.** This Agreement entered into between you and Monotype is governed by the laws of the Commonwealth of Massachusetts applicable to contracts wholly entered and performable within such Commonwealth (without regard to applicable conflict of laws provisions). The United States District Court for the District of Massachusetts or, if federal subject matter jurisdiction is lacking, the Superior Court of the Commonwealth of Massachusetts in Middlesex County, shall be the exclusive forum for any disputes arising out of or related to such agreement. Both you and Monotype Imaging agree to the personal jurisdiction and venue of these courts in any action related to such agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

## **11. Definitions:**

-"Font Software" means software or instructions which, when used on an appropriate device or devices, generates typeface and typographic designs and ornaments. Font Software shall include all bitmap representations of typeface and typographic designs and ornaments created by or derived from the Font Software.

-"Monotype" means collectively Monotype Imaging Inc., its successors and assigns, its parent and affiliated corporations (including Monotype GmbH and Monotype ITC Inc.), its authorized distributors, and any third party that has licensed to Monotype Imaging any or all of the components of the SkyFonts Client Software supplied to you pursuant to this Agreement.

-"SkyFonts Client Software" means a software application that either you install or is installed within your operating

system that enables and disables the Use of and access to the Font Software.

-“Use” of the SkyFonts Client Software shall occur when an individual is able to give commands (whether through a Workstation or otherwise) that are followed by the SkyFonts Client Software.

-“Workstation” means a hardware component in which an individual is able to give commands (whether by keyboard or otherwise) that are followed by the SkyFonts Client Software.

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